

FILED

UNITED STATES DISTRICT COURT 07 NOV -8 AM 10:36
SOUTHERN DISTRICT OF CALIFORNIA

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

(P)

DEPUTY

ROBERT MOORE
PETITIONER
Vs.
UNITED STATES OF
AMERICA
RESPONDANT

Case No. CR 88-0936-t

'07 CV 2137 H
Motion for Correction or
Reduction of Sentence of
Judgement.

Under Title 18 U.S.C. 3582(c)(2)

Procedural History

Petitioner before the court, on september 25, 1989 was sentenced by the Honorable Howard B. Turrentine, which defendant received 300 months by the Court, which the calculated a level 36 (see exhibit 3&4) of the sentencing transcript.

Legal Argument

The defendant calculates what Congress and the U.S sentencing commission proposed crack guidelines new amendment, the defendant would be under the amount of 500 grams by the government on our calculation (see exhibit 4&8) sentencing hearing transcript.

Next Legal Argument

Is that 18 U.S.C Section (c) (2) gives the district court the discretion to reduce a sentence whenever a guideline range has been subsequently low by the sentencing commission.

Honorable Judge, You do have the flexibility with the new amendment which gives you the power to resentence me. The petitioner in this above case is asking the court to grant this motion for immediate release based on the new crack cocaine amendment. And the fact the petitioner has served 90 percent of his 300 month sentence that was imposed on him.

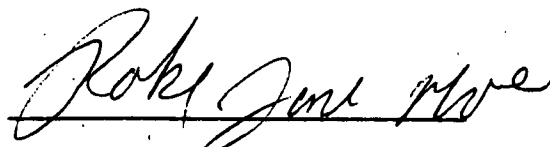
Two Argument

The petitioner is in fact a model inmate in the prison. (see exhibit #2 & 3) Chronological disciplinary record. Also (see exhibit #5) petitioner education transcripts while in prison.

Conclusion

For all the foregoing reasons, petitioner humbly request that this Honorable court grant his motion for immediate release.

Date: Nov, 3, 2007

A handwritten signature in cursive script, appearing to read "Robert James Moore", written over a horizontal line.

Robert James Moore #15878-198

1 count two. So, that's why I say that I don't think there is
2 a basis for going to 36, as counsel does and the Probation
3 Office does. That was one of the reasons we pled to -- that
4 this case resolved itself, was because we limited the object
5 of the conspiracy to the substantive count in count seven.

6 I think it would be unfair, your Honor, to hold
7 Mr. Moore responsible for all -- for the entire -- all of
8 the overt acts, et cetera, et cetera, in the conspiracy
9 count when that was not his intention, as testified on the
10 record.

11 THE COURT: Counsel, I've read and considered the
12 presentence report -- this, and of course, your argument,
13 and I've read the matters that you filed in support of your
14 position here this morning. I believe, under the
15 guidelines, I'm entitled to take into consideration the
16 overall amount of drugs involved. I, therefore, will find
17 that this case is a category 36.

18 I have some disagreement with the Probation Office
19 at this point on the state of the record as to whether the
20 Defendant is classified as a four or a three, and I will
21 reduce that from a four to a three -- there's no question in
22 my mind that the Defendant was a manager or a supervisor,
23 but not an organizer or leader. He may have been, but I
24 think it's very clear that at least, he was a manager or
25 supervisor. So, that will increase the matter from 36 to

EXHIBIT 4 / # Sentencing Transcript

4

1 it's under 500 grams, it's a 34, and if it's 500 or over,
2 it's a 36?

3 MR. LASATER: Yes, your Honor. The only
4 disagreement is what's attributable to Mr. Moore.

5 THE COURT: Okay. But, we have the two bases to
6 start from -- your contention and your contention. Very
7 well -- proceed, Counsel.

8 MR. BROOKLIER: Perhaps, I should start there
9 then, your Honor, since the Court asked that question. This
10 is less than 500 grams by the Government's own calculations.
11 It's clearly a criminal 34 category. I would suggest -- and
12 I would have suggested -- if the Government wants to stick
13 Mr. Moore with more than he pleads to, that should have been
14 done by a trial. We should have had a trial.

15 You know, your Honor, when Mr. Moore was first
16 indicted, when he voluntarily surrendered himself to the
17 jurisdiction of this court -- he was out at sea someplace.
18 He didn't have to come back. When he came back here in
19 November, your Honor, that was -- count seven was the charge
20 he was facing -- that hand-to-hand delivery. And, we go
21 through months and months of pre-trial preparation, and the
22 Government, on the very day of trial -- and I mean this in
23 no demeaning way to Mr. Lasater, who has been a perfect
24 gentlemen and a fine advocate for the Government -- on the
25 day of trial drops the 848. That has to mean something. It

EXHIBIT 3#

1 39. He gets a credit of two for acknowledging his
2 responsibility, which puts him at 37.

3 Then, we go to the criminal history. The
4 Government puts him at nine, which would put him at class
5 four. Where's my chart?

6 (Pause.)

7 MR. BROOKLIER: Does your Honor wish the
8 sentencing table?

9 THE COURT: I have it here. It's just a question
10 of finding it. Let's see, we've got 36, 34, 37 -- and I
11 would think he would fit in as to not a class four, but a
12 class three, which the sentence range is from 262 to 327
13 months. That's the way I calculate it.

14 Be that as it may, the Court has read and
15 considered the presentence report, considered the nature and
16 circumstances of the offense, and the history and
17 characteristics of the Defendant. I find the guidelines --
18 computed in the manner and method which I did, of 262 to 327
19 months. Therefore, pursuant to the Sentencing Reform Act of
20 1984, it's the judgment of the Court that the Defendant is
21 hereby committed to the custody of the Bureau of Prisons to
22 be imprisoned for a term of 300 months. Upon release from
23 imprisonment, the Defendant shall be placed on supervised
24 release for a period of five years. The Defendant shall
25 abide by the standard conditions of supervised release and

Exhibit 8

8

1 Just a couple of other comments, your Honor -- I'd
2 like to cite one case to the Court that I think is going to
3 be a very important case in terms of the guidelines and
4 their application. It really comes down to the real versus
5 charged offense sort of theory. There's a case in the
6 Western District of Tennessee -- it's called United States
*7 versus Smith, and it's at 686 F.Supp. 1246. The court in
8 that case stated -- and I'm going to quote,

9 "The conduct necessary to support inclusion in the
10 base offense level must be established by a
11 finding of the jury, a plea of guilty confirmed by
12 a finding of guilty in open court, or a stipulated
13 offense other than the offense of the conviction."

14 Now, what that means, your Honor, is this. This
15 is what I think it means -- that the Government can't agree
16 to a stipulated basis, or a factual basis, on June 7, 1988
17 -- the date of Mr. Moore's plea -- and then, come in here
18 four months later, as if they've convicted him of the 848.
19 They didn't. That's why we have juries, that's why we have
20 courts.

21 Lastly, your Honor, I think there are some things
22 that need to be stricken from the presentence report. I'm
23 not going to go through the Prosecution version because
24 that's their allegation, and I know that the Court accepts
25 it that way. But, in terms of -- starting on page 21, to be

the new part

REGISTER NO: 15878-198 NAME... MOORE, ROBERT JAMES
FUNCTION...: PRT FORMAT: CHRONO LIMIT TO MOS PRIOR TO 03-17-2005

REPORT NUMBER/STATUS.: 990999 - SANCTIONED INCIDENT DATE/TIME: 05-11-2002 0814
DHO HEARING DATE/TIME: 05-21-2002 1720
FACL/CHAIRPERSON.....: VIM/T. MCGEE
REPORT REMARKS.....: COMMITTED PROHIBITED ACT CODE 397. SANCTION PER 5270.07.
ADMITTED USING INMATE SUTTLES #04268-031'S PIN#.

397 PHONE ABUSE, NON-CRIMINAL - FREQ: 1
LP COMM / 30 DAYS / CS
COMP: LAW: ADMITTED USING INMATE SUTTLES #04268-031'S PIN #
TO MAKE TELEPHONE CALLS.
LP PHONE / 30 DAYS / CS
COMP: LAW: LOSS OF PHONE AND COMMISSARY TILL 06-19-2002.

REPORT NUMBER/STATUS.: 829766 - SANCTIONED INCIDENT DATE/TIME: 10-29-2000 2033
DHO HEARING DATE/TIME: 11-29-2000 0923
FACL/CHAIRPERSON.....: VIM/T. MCGEE
REPORT REMARKS.....: INMATE COMMITTED PROHIBITED CODE 406 & SANCTIONED IN COM
COMPLIANCE WITH P.S. 5270.07 INMATE DISCIPLINE AND SHU

406 USING PHONE OR MAIL W/O AUTH - FREQ: 2
EXTRA DUTY / 10 HOURS / CS
COMP: LAW: INMATE TO PERFORM 10 HOURS OF EXTRA DUTY BEFORE
COMPLETION DATE OF 12/13/00

REPORT NUMBER/STATUS.: 827227 - SANCTIONED INCIDENT DATE/TIME: 10-26-2000 0900
DHO HEARING DATE/TIME: 11-20-2000 1420
FACL/CHAIRPERSON.....: VIM/T. MCGEE
REPORT REMARKS.....: 297 CODE REDUCED TO PROHIBITED CODE 406. VIOLATION COMM-
ITTED PRIOR TO 11-06-2000.

406 USING PHONE OR MAIL W/O AUTH - FREQ: 1
EXTRA DUTY / 20 HOURS / CS
COMP: LAW: INMATE MUST COMPLETE 20 HOURS EXTRA DUTY BY 12-04-
2000.

REPORT NUMBER/STATUS.: 814230 - SANCTIONED INCIDENT DATE/TIME: 09-09-2000 1430
UDC HEARING DATE/TIME: 09-13-2000 2030
FACL/UDC/CHAIRPERSON.: VIM/E/F/T.A.JONES
REPORT REMARKS.....: INMATE ADMITTED TO MAKING INAPPROPRIATE COMMENT TO STAFF

312 BEING INSOLENT TO STAFF MEMBER - FREQ: 1
EXTRA DUTY / 8 HOURS / CS
COMP: LAW: 8 HOURS EXTRA DUTY TO BE PERFORMED 9/17/00
LP PHONE / 30 DAYS / CS / SUSPENDED 180 DAYS
COMP: LAW: 30 DAY PHONE RESTRICTION SUSPENDED PENDING CLEAR
CONDUCT FOR 180 DAYS

G0002

MORE PAGES TO FOLLOW

EXHIBIT 2

REGISTER NO: 15878-198 NAME...: MOORE, ROBERT JAMES
FUNCTION...: PRT FORMAT: CHRONO LIMIT TO ___ MOS PRIOR TO 03-17-2005

REPORT NUMBER/STATUS.: 507085 - SANCTIONED INCIDENT DATE/TIME: 07-05-1997 1842
UDC HEARING DATE/TIME: 07-08-1997 1359
FACL/UDC/CHAIRPERSON.: FLP/E/PEEK
REPORT REMARKS.....: TELEPHONE RESTRICTION FOR 45 DAYS
406 USING PHONE OR MAIL W/O AUTH - FREQ: 1
LOSE PRIV / 45 DAYS / CS
COMP: LAW: TELEPHONE RESTRICTION FOR 45 DAYS

REPORT NUMBER/STATUS.: 246495 - SANCTIONED INCIDENT DATE/TIME: 08-04-1994 0750
UDC HEARING DATE/TIME: 08-08-1994 1500
FACL/UDC/CHAIRPERSON.: PHX/PIMA/SHAW, F
REPORT REMARKS.....: COMMISSARY RESTRICTION (SUSPENDED)
327 CONTACTING PUBLIC WITHOUT AUTH - FREQ: 1
LOSE PRIV / 60 DAYS / CS / SUSPENDED 180 DAYS
COMP: LAW: COMMISSARY

REPORT NUMBER/STATUS.: 62982 - SANCTIONED INCIDENT DATE/TIME: 01-13-1992 1210
DHO HEARING DATE/TIME: 01-28-1992 0903
FACL/CHAIRPERSON.....: PET/TARLETON H
REPORT REMARKS.....: STAFF REP E. JACKSON, CODES 203 AND 298 WERE EXPUNGED
FROM REPORT
307 REFUSING TO OBEY AN ORDER - FREQ: 1
DS / 15 DAYS / CS / SUSPENDED 90 DAYS
COMP: LAW: RELEASE TO POPULATION PROVIDING BED SPACE IS
AVAILABLE
LOSE PRIV / 90 DAYS / CS
COMP: LAW: LOSS OF COMMISSARY EXCEPT FOR STAMP PURCHASES

G0005 TRANSACTION SUCCESSFULLY COMPLETED - CONTINUE PROCESSING IF DESIRED

EXHIBIT #5

VIMF2
PAGE 001 OF 001 *

INMATE EDUCATION DATA
TRANSCRIPT

* 03-17-2005
* 07:34:07

REGISTER NO: 15878-198
FORMAT.....: TRANSCRIPT

NAME...: MOORE
RSP OF: VIM-VICTORVILLE MED I FCI

FUNC: PRT

FACIL ASSIGNMENT DESCRIPTION

VIM ESL HAS ENGLISH PROFICIENT

VIM GED HAS COMPLETED GED OR HS DIPLOMA

EDUCATION INFORMATION

START DATE/TIME STOP DATE/TIME

07-31-1991 0830 CURRENT

06-01-1991 0712 CURRENT

EDUCATION COURSES

SUB-FACIL	DESCRIPTION	START DATE	STOP DATE	EVNT	AC	LV	HRS
VIM	RPP FCI PRISON 2 PAYCHECK (C6)	04-26-2004	07-21-2004	C	C	P	0
VIM	FILM STUDY COURSE	10-26-2003	01-16-2004	P	C	P	24
BMP	SEWING VT: M-F 12:30P-3:30PM	07-16-1999	08-13-1999	P	C	E	60
PHX	VCR REPAIR	05-23-1994	07-26-1994	P	C	M	240
PET	GED PM	03-17-1991	05-03-1991	P	W	I	105
PET	ABE MATH PM	01-28-1990	03-17-1991	C	W	I	40
PET	ABE ENGLISH PM	01-28-1990	03-17-1991	P	C	P	40
PET	ABE READING PM	01-28-1990	03-17-1991	C	W	I	40
PET	WELDING VT RELATED TRNG	10-01-1990	12-16-1990	P	C	E	25
PET	WELDING VT AM MAIN INST	10-01-1990	12-16-1990	P	C	M	200
PET	WELDING VT RELATED TRNG	04-24-1990	09-30-1990	P	C	E	50
PET	WELDING VT AM MAIN INST	04-24-1990	09-30-1990	P	C	M	336
PET	WELDING EXPLORATORY TRNG	04-10-1990	04-24-1990	P	C	E	80

G0000

TRANSACTION SUCCESSFULLY COMPLETED

Certificate of Service

Petitioner hereby Certifies that a true and correct copy of the foregoing motion has been sent postage paid by regular U.S. mail to the following address:

TO Clerk of the Court Southern
District of California
UNITED STATES DISTRICT COURT U.S. CLERK
880 Front Street
San Diego, Ca 92101-8900

Date

Nov, 3, 2007

Robert J. Moore

Robert Moore #15878-198

in pro se

El Reno F.C.I.

P.O.BOX 1500

El Reno, OK 73036

Certificate of Service

Petitioner hereby certifies that a true and correct copy of the foregoing motion has been sent postage paid by regular U.S. mail to the following address:

UNITED STATES DISTRICT COURT

U.S. ATTORNEYS OFFICE

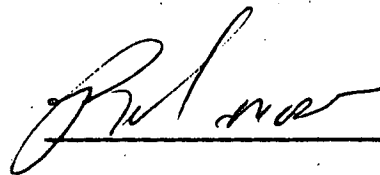
880 FRONT STREET

ROOM 6293

SAN DIEGO, CA 92101-8900

Date

NOV 3, 2007



Robert Moore in Pro Se

#15878-198

El Reno F. C. I.

P.O. BOX 1500

El Reno, Ok 73036

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Robert Moore

DEFENDANTS

07 NOV -8 AM 10:36

CLERK United States of America
SOUTHERN DISTRICT OF CALIFORNIA(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

San Diego

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Robert Moore
El Reno Federal Correctional Institution
P.O. Box 1500
El Reno, OK 93036

ATTORNEYS (IF KNOWN)

U.S. Attorney

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ U.S. Government Plaintiff ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PT | DEF | | PT | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 3582

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. <input type="checkbox"/> Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(p)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input checked="" type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number 88 cr 0936 H

DATE

11/7/07

SIGNATURE OF ATTORNEY OF RECORD

Chris P. Smith

EA